

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

HERMAN LEE KINDRED, #671207,

Plaintiff,

v.

BOBBY LUMPKIN, et al.,

Defendants.

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Case No. 6:20-cv-540-JDK-KNM

**ORDER ADOPTING THE REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Herman Lee Kindred, a prisoner confined at the Michael Unit within the Texas Department of Criminal Justice (TDCJ), proceeding pro se and seeking to proceed *in forma pauperis*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell for findings of fact, conclusions of law, and recommendations for the disposition of the case.


On October 29, 2020, Judge Mitchell issued a Report recommending that Plaintiff's motion for leave to proceed *in forma pauperis* be denied and Plaintiff's case be dismissed with prejudice for purposes of proceeding *in forma pauperis* under 28 U.S.C. § 1915(g). Specifically, Judge Mitchell found that Plaintiff accumulated at least three strikes prior to filing this October 2020 lawsuit and failed to demonstrate imminent danger of serious physical injury. A copy of the Report was sent to Plaintiff and he received it on November 11, 2020. Docket No. 6.

This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days). Here, Plaintiff did not object in the prescribed period. The Court therefore reviews the Magistrate Judge’s findings for clear error or abuse of discretion and reviews his legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”).

Having reviewed the Magistrate Judge’s Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 4) as the findings of this Court. It is therefore **ORDERED** that Plaintiff’s motion for leave to proceed *in forma pauperis* (Docket No. 3) is **DENIED** and that this case is **DISMISSED**, with prejudice for purposes of proceeding *in forma pauperis* under 28 U.S.C. § 1915(g), but without prejudice as to the refiling of his claims without seeking *in forma pauperis* status.

Further, if Plaintiff pays the requisite \$400 filing fee within fifteen days of this Order, the lawsuit shall proceed as though the full filing fee had been paid from the outset.

So **ORDERED** and **SIGNED** this **23rd** day of **December, 2020**.

  
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JEREMY D. KERNODLE  
UNITED STATES DISTRICT JUDGE